

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

Disposition of Down Payments and)	
Pending Applications By Certain Winning)	
Bidders in Auction No. 35)	WT Docket No. 02-276

PETITION FOR PARTIAL RECONSIDERATION

Summit Wireless, LLC (“Summit”) by its attorneys, and pursuant to Section 405 of the Act 47 U.S.C. §405, and Section 1.106 of the rules, 47 C.F.R. §1.106, hereby submits its comments for reconsideration of the Commission’s Order and Order on Reconsideration in the referenced proceeding¹ (Report and Order).

Specifically, Summit formerly participated in the captioned proceeding, having filed reply comments on October 21, 2002. That filing is reflected in Appendix A to the Report and Order. Yet at no place in the Report and Order was there any mention, much less discussion, of Summit’s argument. Summit supported those commenters that urged the Commission to provide relief to those Auction 35 high bidders whose applications are pending. Summit also urged that the same opportunity for relief be provided to all Auction 35 winners, including those high bidders who have already been awarded their licenses. This would assure that all auction winners are treated similarly and have the opportunity to void their Auction No. 35 obligations.

Summit explained that it acquired thirteen (13) of those licenses pursuant to Auction No. 35, and that Summit has already been awarded the licenses for which it was the high bidder. Summit demonstrated that the timing of action on its applications is the only matter that separates Summit from other Auction No. 35 high bidders.

¹ Report and Order, FCC 02-311, ___ FCCR ___ (2002), rel. November 14, 2002.

It demonstrated that the record in this proceeding reflects clearly that since the start of the auction, the value of the licenses “won” in that auction has declined precipitously.

That dramatic change in wireless valuation is the most significant change that has occurred since the start of the auction, and is the most unforeseeable event. The fact that long pending litigation has permitted only some of the licenses “won” in the auction to have been granted, while others have remained pending, pales in comparison. This is especially so since all parties to the auction “assumed that risk” going into it. Moreover, for all auction winners, financial obligations remained in effect regarding those licenses. For those who’s Auction No. 35 licenses have been granted, it is existing debt or eroded equity, for those with pending applications, it is contingent liabilities. For all winners, the value now is far less than that at the conclusion of the Auction and the licenses are far “under water” via a vis obligations that remain in effect regarding them.

Summit further explained that the various licenses won in Auction No. 35, were auctioned as discrete components of a single group of licenses. That is the essence of a simultaneous multiple round auction. Their values were, and remain, connected. When the Commission acted (as it should have to permit high bidders to opt out of their bids for licenses that remain “pending”), it caused the values for all auction No. 35 licenses to plummet. Because that decline in values is equally relevant for licenses not yet won and for those that have been granted, the relief should also have been the same.² Summit further explained that it would be both wrong, and impermissible, were the Commission to provide such relief to the nation’s largest carriers, then deny it to small businesses such as Summit.

² See *Melody Music, Inc. v. FCC*, 345 F.2d 750 (D.C. Cir. 1965) (the court held that the Commission could not arrive at different outcomes in the cases of similarly- situated parties).

Yet the Commission did not even address this request for relief, much less adopt it. Thus, the rule changes adopted by the Commission in the Report and Order are deemed to be “arbitrary” and “capricious” as “the opportunity to comment is meaningless unless the agency responds to significant points raised by the public.”³ Further, the Courts have noted that “[c]omments standing unaddressed thus may well leave a reviewing court unable to say that the agency has considered all relevant factors.”⁴ The Commission’s failure to properly address all relevant comments, specifically Summit’s position, is strengthened by the quick release of the Report and Order following the conclusion of the comment period; thus, giving the Public the impression that the decision was pre-determined.

Summit urges the Commission to reconsider the rule change set for the in its Report and Order and allow all Auction 35 high the same opportunity for relief, including those high bidders who have already been awarded their licenses.

Respectfully submitted,

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³ *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35-36 (D.C. Cir. 1977).

⁴ *Alabama Power Co. v. Costle*, 636 F.2d 323, 385 (D.C. Cir. 1979); *Home Box Office, Inc. v. FCC*, 567 F.2d at 35-36.